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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,585	05/16/2001	Phyllis Leithem	177079-00058	1886

31013 7590 06/16/2003

KRAMER LEVIN NAFTALIS & FRANKEL LLP
INTELLECTUAL PROPERTY DEPARTMENT
919 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/16/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

2C

Office Action Summary

Application No.

09/863,585

Applicant(s)

LEITHEM ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not identify the citizenship of each inventor. The second and third inventor have not identified their citizenship in the Oath.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 104 is rejected under 35 U.S.C. 102(b) as being anticipated by Chatterjee (3932209). Claim 104 is a product by process claim and only the end structure that the product by process limitation results in will be given patentable weight, not the manner in which the article is manufactured.

Chatterjee discloses an absorbent article that has a layer that allows liquid to pass and a water barrier sheet. This is inherent in sanitary napkins and diapers. See column 1. Chatterjee discloses "cold caustic extraction" in column 4, lines 61-68. Chatterjee discloses the treatment at a temperature of less than 60 degrees Celsius, which satisfies the definition set forth by applicant on page 12 of the instant specification. See column 5, line 48 where the use of sodium hydroxide is disclosed. Chatterjee also discloses fluffed pulp my mechanical action as claimed (see column 6, lines 32-33. Chatterjee discloses an amount of fluff pulp that satisfies "at least about 25%" (see column 8, lines 63-68. The end structure that the product by process

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limitation of "cold caustic extraction" results in is found in Chatterjee. With respect to the new limitation of "without chemical crosslinking", as stated previously only the end structure that the product by process limitation results in will be given patentable weight. Chatterjee discloses the same end structure that the claimed product by process limitation results in so the reference is still a 102(b).

1. Applicant's arguments filed 3-19-03 have been fully considered but they are not persuasive. Applicant has argued that the limitation in claim 104 of "without chemical crosslinking" defines over Chatterjee. The examiner disagrees. The examiner takes the position that the end structure (that the claimed product by process limitation results in) is the same as the end structure of Chatterjee. Applicant has even made statements attesting to the fact that the advantages/properties of Chatterjee can be obtained without the crosslinking step. If the end result is an article with the same properties/advantages of Chatterjee, the 102 rejection is still proper. The manner in which the article has been made does not get patentable weight, only the end structure. Applicant's arguments amount to an argument that the method is novel, not the article. It very well may be that applicant has a different method that results in the same end structure but in article claims only the end structure is given weight, not the manner in which the end structure has been made. The rejection is deemed proper and the arguments are found to be non-persuasive.

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR
June 13, 2003


DENNIS RUHL
PRIMARY EXAMINER